

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

STATE OF NEW MEXICO *ex rel.*
State Engineer, *et al.*,

Plaintiffs,

v.

ROMAN ARAGON, *et al.*,

Defendants.

No. 6:69-cv-07941-KWR-KK
Rio Chama Adjudication

Section 1: Main Stem

Acequia de Chamita
Acequia de Hernandez
Acequia de los Salazares

**ORDER GRANTING NEW MEXICO'S MOTION REGARDING PRIORITY DATE
FOR THE ACEQUIAS DE CHAMITA, HERNANDEZ AND SALAZARES**

On December 16, 2009, Special Master Vickie L. Gabin filed her Report on Priorities for Three Acequias which states:

This Report recommends that the Court find no abandonment of water rights by the original settlers in the areas of the current day Acequias de Chamita, Hernandez and Los Salazares, and that the first use of water was 1600.

Doc. 9546 at 1.

On February 10, 2010, the State of New Mexico filed a motion to adopt the recommended priority date of 1600 for the Acequias de Chamita, Hernandez and Los Salazares (the “Three Acequias”), objected to some portions of the Report and requested that the Report be modified. *See* Doc. 9597 (“Motion to Adopt”). The State requested that the Court correct minor errors and clarify four of the Special Master’s Findings of Fact and proposed modified versions of Findings of Fact Nos. 6-8 and 10. Motion to Adopt at 2-4. The State objected to discussion section of the Report, the Special Master’s Statement of the Questions to be Determined and Conclusion of Law No. 1 which states:

The State has failed to show abandonment by clear and convincing evidence with regard to: a. the existence of a period of non-use between 1608 and 1714; and b.

the settlers' intent, either express or implied, to abandon the lands irrigated by water diversion structures which are substantially the present-day Acequias de Chamita, Hernandez and Los Salazares.

Report at 10. The State objected to the Question to be Determined, the Discussion and Conclusion of Law No. 1 "because they represent a misstatement of the requirements of New Mexico law regarding the abandonment of water rights and a misreading of the New Mexico Supreme Court's opinion in *South Springs*." Motion to Adopt at 13-14 (stating "the State does not object to the ultimate recommendations of the Special Master, that the water rights initiated by the first Spanish settlers in the area of the Acequias de Chamita, Hernandez and Los Salazares were not abandoned, and that 1600 is an appropriate priority date for those rights"). The Three Acequias also requested that the Court adopt the recommended priority date of 1600. *See* Doc. 9556, filed January 7, 2010.

Numerous *pro se* parties filed objections to the Report. The Court had previously provided all claimants an opportunity to offer proof of an earlier priority date and limited its consideration of objections to the Special Master's Report to those persons that timely objected to the Notices and Orders to Show Cause. *See* Doc. 9700, filed April 28, 2010. The Court also ordered the Special Master to serve the owners of five subfiles, who were not previously served, with a Notice and Order to Show Cause. *See* Doc. 9979, filed November 16, 2010. Only David and Cecilia Ortiz, who had a water right on the Acequia de Chamita, timely filed an objection to the recommended priority date of 1600. *See* Doc. 10680, filed January 11, 2012 (seeking a priority date of August 11, 1598, based on an entry in Don Juan de Oñate's journal stating "On the 11th we began work on the irrigation ditch").

The State of New Mexico then filed its Renewed Motion to adopt the Special Master's Report regarding the recommended priority date of 1600 for water rights under the three acequias *other* than the lands owned by David Ortiz and Cecilia Ortiz. *See* Doc. 10865, filed October 8,

2012 (“Renewed Motion”). The only objection to the State’s Renewed Motion was filed by David Ortiz. *See* Doc. 10869, filed October 17, 2012. The Court deferred ruling on the State’s Renewed Motion until after it held an evidentiary hearing to determine the priority date of the Ortizes’ water right.

United States Magistrate Judge Lorenzo F. Garcia held an evidentiary hearing on February 11-12, 2013, regarding the Ortizes’ priority date. *See* Doc. 10900, filed March 8, 2013, (indicating that the Oñate party began digging irrigation ditches on the east side of the Rio Grande at the confluence with the Rio Chama on August 11, 1598, but did not begin using water from the Rio Chama on the west side of the Rio Grande, where the Three Acequias are located, until 1600). United States District Judge Martha Vázquez adopted Judge Garcia’ Findings and Recommended Disposition that the priority date for the Ortizes’ water right is 1600. *See* Doc. 10981, filed December 16, 2013.

The State of New Mexico now moves the Court to rule on its Renewed Motion stating: “Now that all objections to the priority date of 1600 are resolved, it is proper for the Court to enter its order adopting the recommended priority date.” Motion by State of New Mexico for Court to Rule on Doc. No. 10865 [the Renewed Motion] at 3, Doc. 11634, filed February 1, 2023. No responses opposing the State’s Motion for a ruling on its Renewed Motion have been filed.

IT IS ORDERED that:

- (i) The Motion by State of New Mexico for Court to Rule on Doc. No. 10865, Doc. 11634, filed February 1, 2023, is **GRANTED**.
- (ii) The Renewed Motion by the State of New Mexico to Adopt, in part, to Modify and Objections to the Special Master’s Report on Priorities for Three Acequias, Doc. 10865, filed October 8, 2012, is **GRANTED** as follows:

- (a) The Court grants the State of New Mexico's request to modify Findings of Fact Nos. 6-8 and 10 as proposed by the State.
- (b) The Court grants the State of New Mexico's request to not adopt the Special Master's Statement of the Questions to be Determined, the discussion section of the Report and the Special Master's Conclusion of Law No. 1.
- (c) The Court adopts the Special Master's Findings of Fact as modified and the Special Master's recommendation that statements that the priority date for the Acequias de Chamita, Hernandez and Los Salazares is 1600.



KEA W. RIGGS
UNITED STATES DISTRICT JUDGE